

**Public comment on the proposals presented to the Mandated Reporter Commission
regarding potential revisions of the Massachusetts Mandated Reporter Law**

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I am the mother of a Black and Latino boy who, at 6 years of age, was reported on a 51a as the alleged perpetrator of sexual abuse and reported to law enforcement as the alleged perpetrator of sexual assault. I am also an applied social scientist and hold a PhD in social welfare policy. I have extensive research and professional experience in the fields of education, and health and human services.

My public comment on the *Report Seeking Public Comment: Proposals Presented to the [Mandated Reporter] Commission (Commission Report)*, **offers input regarding the following sections of the Commission Report (1) disproportional impact, (2) reporting responsibility and definitions, and (3) penalties.**

Background

The proposed revisions to and expansion of the mandated reporter law presents a policy threat to the health and wellbeing of children and families of color.

As stated in the Commission Report, “children of color are over-represented at all stages of involvement with Child Protective Services, including the initial reporting stage (p.8).” This serious dynamic, however, demands elaboration, particularly considering proposed revisions to the mandated reporter law could worsen documented racial/ethnic inequities in reporting and the involvement of children and families of color with child welfare authorities- consequences which cannot be construed as “unintended” since these inequitable outcomes under extant policy have been established.

Research has shown Black children are not treated equally in school classrooms, as evidenced by research which has documented that teachers more closely monitor Black students, in comparison to white students, as young as preschoolers, especially boys, when they perceive challenging behavior. Moreover, Black boys are perceived as being four to five years older than they are and, additionally, are perceived as guilty when teachers perceive challenging behaviors, which has also been documented in the literature¹. This dovetails with research from the Yale Child Study Center² which has established that implicit bias among teachers regarding sex and race is related to school discipline among very young children, contributing to the disproportionate application of harsher school discipline practices to children of color. Irrespective of the underlying factors that cause bias in individuals, this research suggests the increased scrutiny -policing- of the little Black and Brown boys in school could contribute to a greater likelihood that educators will interpret and label behaviors, specifically developmentally appropriate behaviors, of Black boys as challenging, in comparison to white students, which may help

¹ Gilliam, W. S., Maupin, A. N., Reyes, C. R., Accavitti, M. and Shic, F.. Do Early Educators’ Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions? Yale University Child Study Center. September 28, 2016. Retrieved from:

https://medicine.yale.edu/childstudy/zipgler/publications/Preschool%20Implicit%20Bias%20Policy%20Brief_final_9_26_276766_5379_v1.pdf

² Goff, P. A., Jackson, M. C., Di Leone, B. A. L., Culotta, C. M., & DiTomasso, N. A. (2014). The essence of innocence: Consequences of dehumanizing Black children. *Journal of Personality and Social Psychology*, 106(4), 526–545. <https://doi.org/10.1037/a0035663>. Retrieved from: <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>

explain the harsher school discipline applied to boys of color that has been documented, including referrals to law enforcement. This is consistent with the literature on implicit bias which has shown how internalized attitudes and beliefs, such as stereotypes, bias perception and judgement, and which people unconsciously rely on when making decisions, particularly quick decisions³. The consequence of these social dynamics and psychological processes has been surmised in the literature as Black boys being deemed to be more “dangerous” in school⁴. This illustrates how students of color are, effectively, targeted in school by educators, and illustrates that children of color may be perceived as criminals by school personnel, which explains why the school to prison-pipeline begins as early as Preschool⁵. In addition to creating negative educational experiences for children and families of color, which it is well documented leads to poorer educational outcomes over the long term, these socio-environmental, and institutional threats to the development of children of color illustrate how racism is structural, as manifest in the inequitable application of harsh school discipline, adult perceptions of behavior, referrals to law enforcement and child welfare authorities, and the overall burden of discrimination and differential treatment based on race and gender that is applied to boys of color in school. It is one example of how institutions inflict violence on children and families of color.

My experience

In Nov 2019, my then six-year-old son was reported to DCF and local police by the Somerville Schools when he was in first grade. The case with my son was well documented in the national news (see: [Boston Globe article from 2/20/21](#) and [Good Morning America interview on 2/22/21](#)) and local media (see: [WCVB news on 4/23/21](#), [Somerville Journal article on 4/13/21](#)). In brief: my son and his female classmate, a white girl with whom he was good friends, were playing in the cubby area in the classroom. According to the classroom teacher my son touched the girl on “her bum.” The alleged incident was not observed by the teacher or any supervising adult. School administrators engaged in a selective investigation, and no one talked to my young son about the alleged incident which should have been treated as a teaching moment.

Training: Teachers and school administrators in Somerville are required to complete the mandated reporter training provided by the Middlesex County Children’s Advocacy Center. This training contains an example with a six-year-old child that is almost identical to the alleged situation with my son. The purpose of including this example in the training is to illustrate developmentally appropriate behaviors in young children that do not qualify as sexual abuse, and which should not be reported. The training clearly states that “sexual curiosity and behaviors that are developmentally appropriate for children six years old or younger do not qualify as sexual abuse.”

Reporting to law enforcement: In spite of the training school personnel complete which clearly indicated the alleged incident should not have been reported, it was escalated by school administrators: The school (1) filed a 51a with DCF, alleging my son was the perpetrator of sexual abuse; and (2) reported

³ McIntosh, K., Girvan, E., Horner, R., & Smolkowski, K. (2014). Education not Incarceration: A Conceptual Model for Reducing Racial and Ethnic Disproportionality in School Discipline. *Journal of Applied Research On Children: Informing Policy for Children at Risk*, 5 (2). Retrieved from: <https://files.eric.ed.gov/fulltext/EJ1188503.pdf>

⁴ Goff, P. A., Jackson, M. C., Di Leone, B. A. L., Culotta, C. M., & DiTomasso, N. A. (2014). The essence of innocence: Consequences of dehumanizing Black children. *Journal of Personality and Social Psychology*, 106(4), 526–545. <https://doi.org/10.1037/a0035663>. Retrieved from: <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>

⁵ U.S. Department of Education Office for Civil Rights. 2013-2014 Civil Rights Data Collection: A First Look: Key Data Highlights on Equity and Opportunity Gaps in our Nation’s Public Schools. Retrieved From: <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>

my son to the local police alleging he committed sexual assault. The school used increasingly severe, criminal language to describe the alleged incident with each report filed- bum became private parts, touching became grabbed. Local police came to my son's school- unbeknownst to me- when my son was in his classroom. A second 51a was also filed. Both 51a reports were screened out, but a DA referral was made by DCF alleging my son was the perpetrator of sexual assault. Local police categorized the allegations against my son as "indecent assault and battery", and although police stated my son was "too young" for them to "do" anything, they referred him to the Middlesex DAs office, where the report was also screened out. That all these reports were screened out is evidence that this alleged incident should not have been reported by the school. The only seeming purpose it has served is to enter my young child- a Black and Latino boy- into various state, county, and local law enforcement and child welfare surveillance systems, which may be able to hold my son's records indefinitely. This is an example of how policies serve to funnel children and families into various systems, specifically law enforcement and child welfare, which disproportionately monitor people and communities of color- all because of fallacious allegations in reports to multiple agencies which should never have been filed.

Consequences: There are multiple consequences of this over-reporting. Firstly, as acknowledged in the Commission Report, "a history of multiple 51A reports, whether they are screened-in or screened-out, may elevate the concern of the DCF screener taking the reports so as to tip the scales to screen-in a report that may, in other circumstances, be screened-out. In this way, a history of 51A filings can exacerbate the effects of biased reporting for those who fall victim to multiple bias-based reports." Clearly, the Commission is aware that bias-based reports are filed, as they do, in fact, exist, and, moreover, there are victims of multiple bias-based 51a reports. The morning of the day the alleged incident took place my son had no behavioral, child welfare, or law enforcement reports on him anywhere, but after this incident he had five- 2 with DCF, 1 with local police, 1 with the DAs office, and 1 at the school. This is a dynamic the Commission should seek to mitigate as it is evidence of the harm mandated reporting can cause, especially overreporting.

Importantly, the Commission should carefully note that what started as an action of mandated reporting quickly snowballed into what is effectively considered a criminal matter by law enforcement. The mandated reporter law through DCF mechanisms, in coordination with law enforcement, can effectively turn young children into potential perpetrators- criminals in the eyes of the law, even though children under age 12 cannot be charged with a crime in the state of Mass- when the most basic evidence is lacking, and when incompetent or poorly trained individuals within schools, who have been effectively deputized by state policy, can act without sound judgement and without any accountability mechanisms in place, because the mandated reporter law protects reporters while offering no protections or recourse for victims of bias-based or fallacious reporting. As it stands, the law allows for the reporting of allegations that have no substantiation in any evidence, which can result from various forms of prejudice, racism, cultural misunderstanding, and other forms of implicit bias. This is compounded by the fact that there is no policy requirement that schools, or anyone else, engage with professionals with relevant training and expertise, such as school guidance counselors, nurses, psychologists, or social workers.

My son now has multiple records on him that contain his personally identifying information, as well as mine, at multiple state, county, and local agencies, records that contain serious criminal allegations. I have not been able to obtain the police report on my son because local police have denied my request by using Massachusetts public records law M.G.L. c. 41, section 97D⁶ to deny my request for

⁶ <https://malegislature.gov/laws/generallaws/parti/titlevii/chapter41/section97d>

the report. My son did not commit a crime- as per state law he cannot be charged with a crime. He cannot, legally, commit a crime. Therefore, there can be no victim of a crime. Nevertheless, the police are treating the alleged incident with my son as a criminal matter, treating him as they would a rapist and other violent sexual offenders. It is an egregious distortion of the intent of the law as well as a misapplication of the law.

There are four elements of my son's experience relevant to the potential revisions of the mandated reporter law being considered, that highlight the disparate detrimental consequences of both over reporting, as well as bias-based 51a reports on children and families of color.

- The criminalization of my son is part of a long history of false allegations against Black and Brown men and boys sexually assaulting white girls and women that has a lengthy violent racist history in this country that goes right back to Emmett Till.
- The application of an adult parameter of sexual behaviors to developmentally appropriate behaviors for a young child in early childhood is dangerous and inappropriate.
- School administrators judged and pathologized my son through the lens of race and gender that is consistent with the literature. In another context what happened with my son would have been a minor behavioral mistake- if he were a white girl he would never have been treated as a perpetrator, a criminal, and reported to the police at age 6.
- The burden and cost of correcting the harm done to my son has been steep. Seeking to resolve the consequences of this overreporting to various agencies, and efforts to expunge all the reports on the alleged incident with my son, has been incredibly complex, draining, and difficult to navigate- and I have a PhD, know how to navigate institutions and systems, as well as education and professional experience in relevant spheres of policy and practice. It has also been an incredibly costly pursuit that is beyond the means of most families, particularly families of color- Black and Latino families have significantly less financial resources in comparison to white families, as evidence by a 2015 report by the Federal Reserve Bank of Boston⁷ which found that Black people in Boston have a median net worth of \$8, in comparison to whites at \$250,000. People of color not only pay the steep price of being overreported, which entangles innocent children and families with child welfare and law enforcement when there is no need, but they will again pay a steep price should they try to correct the harm done, if they are even able to.

⁷ The Federal Reserve Bank of Boston. The Color of Wealth in Boston. 2015. Retrieved from: <http://www.bostonfed.org/commdev/color-of-wealth/color-of-wealth.pdf>

Policy Implications

1. **The mandated reporter law and the proposed revisions to the law, are not benign.** Overreporting and rationalizing that it can just be screened out by DCF is a dangerous notion. I can tell you first-hand from personal experience how harmful this overreporting is, and the damage it has done to my son, and my family. That my son and my family should have to carry this burden of multiple records at every level of government across the state, when all the reports were screened-out, and were, furthermore, false, is harmful- it is an act of violence. I have been fighting this profound injustice for 17 months, and I am nowhere close to resolution after thousands of dollars in legal expenses. This is how systems, policies, and institutions inflict violence that reflects a legacy of racist policy that specifically harms people of color.
2. **Encouraging over reporting is dangerous.** The revisions to the mandated reporter law encourage over reporting assuming DCF will “fix it” later. But there is no “fix” for over reporting- the harm will have already been done. Encouraging greater reporting runs the high risk of leading to more bias-based, fallacious, and frivolous reporting. Not only does this reporting in and of itself harm, but the consequences that will follow, such as the existence of reports and possible referral to law enforcement, will cause even more harm. This is institutional and policy violence.
3. **The mandated reporter law does not operate in a vacuum.** Revisions to the mandated reporter law cannot be formulated or implemented without recognizing the multiple contexts within which it is situated. This includes how it intersects with other laws and policies, such as the new police reform bill and the age of criminal responsibility in Mass., as well as the broader socio-political context and history of systemic racial injustice which explains the racial inequities across the spectrum, from generational wealth, home ownership, educational attainment, and mass-incarceration. Not recognizing how policies work in concert broadly and neglecting to enact concrete policy measures to reduce and eliminate inequities in overreporting by race and ethnicity, will worsen and further entrench documented racial inequities in reporting and overreporting reporting to DCF.
4. **The proposed revisions to the mandated reporter law are an example of “race neutral” policy that that can be racist in its application.** As stated in the Commission Report: “There is a clear disproportionate involvement of children and families of color in child protective services in Massachusetts and across the country. The conscious and unconscious biases that govern societal interactions, communication, and conclusions are undoubtably a source of this disproportionate involvement.” If so-called “race neutral” policies inequitably impact people in minoritized racial and ethnic groups, such policy is, effectively, racist- it is how structural racism operates in the 21st century. An example of this is the recent voter suppression bill passed in Georgia. The voter suppression law is also race neutral, but is racist in its application, as it will harm people of color under the guise of protecting the election process. This is a parallel to the proposed expansion of the mandated reporter law which is *intended* to protect children- even though it poses a threat to the wellbeing of children and families of color through over reporting and disproportionate involvement with child welfare authorities and law enforcement. Like voter suppression in Georgia, the revised mandated reporter law will disproportionately harm people, specifically children and families, or color. This is racist policy.
5. **The term “equity” is not mentioned in the text of the Commission Report, and is only found once on p.8 in a citation- but a post George Floyd world demands equity-centered policy to help end the carceral state, not racist policies that will serve to further expand the carceral state.** In this moment of increased attention to the deleterious effects of policing, particularly to communities of color, the

mandated reporter law should be revised to be racially/ethnically explicit and equity centered in its formulation. Subtle recognition of inequities resulting from the mandate reporter law, without creating explicit policy steps to address them, helps to sustain structural injustice. Equity centered policy that aims to advance equity and racial justice, and dismantle systems of oppression upheld by policy, however unintentionally, would provide a policy prescription to actively reduce the documented inequities in reporting, over reporting, and involvement with child welfare authorities recognized in the Commission Report. If addressing these inequities are not explicitly addressed through policy, if policies do not seek to address harm done by current iterations of policy, the new mandated reporter law is likely to worsen documented racial/ethnic inequities in mandated reporting, as well as in the actions and consequences of mandated reporting that follow, such as referrals to law enforcement.

6. **The proposed revisions encompass an overly broad definition of child abuse that can be, and has been, weaponized against families.** I am one parent with a story about schools misusing their mandated reporting powers. It has been found that an overly broad definition of what constitutes child abuse can be “weaponized” against families, especially vulnerable families that are poor/low income⁸. Biased views based on race/ethnicity, gender and socioeconomic status influence perceptions of child behavior and abuse. Overly broad, all-encompassing, catch-all policies will inequitably target and harm poor families, who are disproportionately Black and Latino. The definition of abuse should be sufficiently narrow to not cause additional harm or exacerbate documented inequities in reporting and involvement with child welfare authorities that disproportionately impact minoritized racial/ethnic groups, as well as poor and low-income families.
7. **A default to an adult parameter of sexual behavior and in/appropriate behavior and applying them to children is counter to the child developmental literature.** Policy should be evidence-based, and, in the case of the mandated reporter law, which includes children, and particularly very young children, should specifically demonstrate understanding of children’s developmental status. Policy that treats children, particularly very young children, the same as adults for the purposes of identifying potential perpetrators, holds young/children to the same standards, and extends unlimited discretion to mandate reporters to interpret, infer and judge, and therefore pathologize and criminalize the developmentally appropriate behaviors of young children, is tantamount to discrimination on the basis of age, and reflects a lack of understanding of children’s developmental status and the science of child development.
8. **Children and families who are victims of bias-based and frivolous reporting should have recourse, and DCF should have a clear records expungement mechanism in place.** Bias-based reporting has been documented but consequences for frivolous reporting have no teeth- even though frivolous reporting is defined as criminal. It is challenging- and costly in terms of the legal expenses involved- to prove a 51a is frivolous. Moreover, the law does not offer any remediation mechanism for children and families when allegations are made and screened-out. Revisions to the policy should specifically and clearly state the avenues available to children and families to address bias-based, false, and frivolous allegations and, in addition, have a clear agency mechanism to hold mandated reporters who abuse the law accountable. **Additionally, there should be a system in place to collect data on suspected bias-based and frivolous 51a reports**, as data are needed to document and then address a problem.

⁸ Raz, M. (2020). *Abusive Policies: How the American Child Welfare System Lost Its Way*. University of North Carolina Press.

9. **There should be accountability mechanisms in place, as well as clear consequences for individuals who abuse the mandated reporter law and harm children and families in the process.** Bias-based 51a reports have been documented, and there is evidence that schools misuse their powers to report allegations of child abuse and neglect, effectively weaponizing child protective services against families⁹. The mandated reporter law should have penalties equivalent to the penalties for failing to report including, but not limited to, the suspension or revocation of professional licensure.

10. **Indefinite record keeping is surveillance. Children and families with screened-out reports should have the same rights as children and families with either substantiated or unsubstantiated reports to have records expunged.** Because children and families of color are over-represented in reporting as well as involvement with child welfare services, the indefinite retention of reports and collection of data through mandated reporting will serve to disproportionately surveil children and families of color. DCF should not be able to indefinitely retain reports and keep data on children and families that have been screened-out. Parents and children who are victims of screened out reports, particularly victims of false allegations and frivolous reports, should have a clear mechanism to have records expunged. Currently DCF has tremendous discretion in this regard, and the revised mandated reporter law should have an explicit expungement mandate.

⁹ Klein, R and Preston, C. "When schools use child protective services as a weapon against parents". The Hechinger Report. November 17, 2018. Retrieved from: <https://hechingerreport.org/when-schools-use-child-protective-services-as-a-weapon-against-parents/>